IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPIL No.9 of 2014.

Reserved on: 16.09.2014

Pronounced on: 15th October, 2014

Court on its own motion ...Petitioner.

VERSUS

The H.P. State Cooperative Bank Ltd. and others.

…Respondents.

Coram
The Hon'ble Mr.Justice Mansoor Ahmad Mir, Chief Justice.
The Hon'ble Mr.Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? Yes.

For the Petitioner: Mr.Vishal Mohan, Advocate, as Amicus Curiae.

For the Respondents: Mr.Ajay Mohan Goel, Advocate, for respondents No.1 to 3.
Mr.Vinay Kuthiala, Senior Advocate, with Ms.Vandana Kuthiala and Mr.Diwan Singh Negi, Advocates, for respondents No.4 and 5.

Justice Mansoor Ahmad Mir, C.J.

The Registrar (Judicial) of this Court had put up a note that Bank Authorities are making tax deductions on interest accrued on the term deposits i.e. fixed deposits made by the Registry in terms of the orders passed by the Court in Motor Accident Claims cases. The matter was referred to the Finance/Purchase Committee for examination. The Committee convened its meeting on 20th May, 2014 and was of the view that since the dispute involved is intricate and public interest is involved, therefore, it was recommended that the matter requires consideration on judicial side. The recommendation of the Committee was treated as Public Interest Litigation and suo motu proceedings were drawn.

2. Notices were issued to the respondents, who filed objections.

3. Respondents No.1 to 3, in their joint reply, pleaded that initially they were not deducting the tax on the said deposits, but the objections were raised by the concerned Authorities and that is why they started deducting the tax. Respondents No.1 to 3 have specifically averred in paragraphs 3 to 9 of their reply as to how they started making tax deductions.

4. Respondents No.4 and 5 also filed the reply and pleaded that in terms of the Circular No.8/2011 (F.No.275/30/2011-IT(B)], dated 14.10.2011, (Annexure-4, with the reply), issued by the Income Tax Authorities, the income tax is to be deducted on the interest periodically accruing on the deposits made on the court orders to protect the interest of the litigants.

5. Precisely, the case of the respondents is that they are bound to deduct tax in terms of the circular, dated 14.10.2011, (Annexure-4).

6. We have heard the learned counsel for the parties.

7. The circular, dated 14.10.2011, issued by the Income-tax Authorities, is not in tune with the mandate of Sections 2(42) and 2(31), read with Section 6 of the Income Tax Act, 1961, (hereinafter referred to as the Act). The said circular also is not in accordance with the mandate of Section 194A of the Act.

8. Section 194A of the Act reads as under:

> **"Interest other than "Interest on securities".**
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> **194A.** (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying[43] to a resident any income by way of interest[43] other than income [44][by way of interest on securities], shall, at the time of credit of such income

> to the account of the payee[45] or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :
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> [**Provided** that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.]"

9. Section 194A clearly provides that any person, not being an individual or a Hindu undivided family, responsible for paying to a "resident" any income by way of interest, other than income by way of interest on securities, shall deduct income tax on such income at the time of payment thereof in cash or by issue of a cheque or by any other mode.

10. Question is as to who can be said to be a "resident". The word "resident" has been defined in Section 2(42) of the Act. It is apt to reproduce Section 2(42) of the Act hereunder:

> **"2(42).** "resident" mans a person who is resident in India within the meaning of Section 6;"

11. Therefore, it is clear that "resident" means a person who is resident within the meaning of Section 6 of the Act.

12. Section 2(31) of the Act defines the word "person". It is apt to reproduce Section 2(31) of the Act hereunder:

> "person" includes—
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> (*i*) an individual,
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> (*ii*) a Hindu undivided family,
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> (*iii*) a company,
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> (*iv*) a firm,
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> (*v*) an association of persons[81] or a body of individuals[81], whether incorporated or not,
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> (*vi*) a local authority, and

(*vii*) every artificial juridical person, not falling within any of the preceding sub-clauses.

[*Explanation*.—For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;]

13. While going through the said provisions of law, one comes to the inescapable conclusion that the mandate of the said provisions does not apply to the accident claim cases and the compensation awarded under the Motor Vehicles Act cannot be said to be taxable income. The compensation is awarded in lieu of death of a person or bodily injury suffered in a vehicular accident, which is damage and not income.

14. Chapters X and XI of the Motor Vehicles Act, 1988 provides for grant of compensation to the victims of a vehicular accident. The Motor Vehicles Act has undergone a sea change and the purpose of granting compensation under the Motor Vehicles Act is to ameliorate the sufferings of the victims so that they may be saved from social evils and starvation, and that the victims get some sort of help as early as possible. It is just to save them from sufferings, agony and to rehabilitate them. We wonder how and under what provisions of law the Income Tax Authorities have treated the amount awarded or interest accrued on term deposits made in Motor Accident Claims cases as income. Therefore, the said Circular is against the concept and provisions referred to hereinabove and runs contrary to the mandate of granting compensation.

15. The Apex Court has gone to the extent of saying that the Claims Tribunals, in Motor Accident Claims cases, should award

compensation without succumbing to the niceties of law and procedural wrangles and tangles.

16. The Apex Court in the cases titled ***N.K.V. Bros. (P.) Ltd. vs. M. Karumai Ammal and others etc***., ***AIR 1980, SC 1354,*** and **Sohan Lal Passi v. P.Sesh Reddy and others, AIR 1996 Supreme Court 2627,** observed that the Courts, while awarding compensation under the Motor Vehicles Act, should not succumb to niceties, technicalities and mystic maybes.

17. The Apex Court in **Savita vs. Bindar Singh & others, 2014 AIR SCW 2053,** has held that at the time of fixing compensation, courts should not succumb to niceties or technicalities of law. It is apt to reproduce paragraph 6 of the said decision hereunder:

> *"6. After considering the decisions of this Court in Santosh Devi (Supra) as well as Rajesh v. Rajbir Singh (supra), we are of the opinion that it is the duty of the Court to fix a just compensation. At the time of fixing such compensation, the court should not succumb to the niceties or technicalities to grant just compensation in favour of the claimant. It is the duty of the court to equate, as far as possible, the misery on account of the accident with the compensation so that the injured or the dependants should not face the vagaries of life on account of discontinuance of the income earned by the victim. Therefore, it will be the bounden duty of the Tribunal to award just, equitable, fair and reasonable compensation judging the situation prevailing at that point of time with reference to the settled principles on assessment of damages. In doing so, the Tribunal can also ignore the claim made by the claimant in the*

application for compensation with the prime object to assess the award based on the principle that the award should be just, equitable, fair and reasonable compensation."

18. The ratio of the above said decision is to provide immediate relief to the victims of a vehicular accident, who have suffered damages, in order to save them from starvation and other social evils.

19. The damages are to be assessed while making guess work read with the fact as to what is the loss of dependency to the claimants/victims of a vehicular accident.

20. The Apex Court in **Ghaziabad Development Authority vs. Dr.N.K. Gupta, 2002 INDLAW NCDRC 189,** has held that damages paid for the death of a person cannot be equated with the income and tax cannot be deducted. It is apt to reproduce the observations made by the Apex Court hereunder:

"It would, therefore, appear to us that the provisions of the Land Acquisition Act where interest is payable under Sections 28 and 34 and tax is deducted at source under section 194A of the Income-tax Act would not apply in the present case where the GDA has been asked to pay interest on the amount refunded to the complainant because of its failure to construct the promises flat and to prive necessary facilities. The amounts which were paid to the GDA by the complainant were not paid by way of any deposit or the GDA had not borrowed that money. And, as a matter of fact, interest as defined in clause (28) of Section 2 of the Income Tax Act is not that interest as was directed to be paid to the complainant by the GDA. Interest to the complainant (here Dr. Gupta) has not been awarded on the basis of any deposit made by the complainant or the GDA being the borrower of any money of the complainant. Here interest payment is by way of damages. Merely describing the damages as by way of interest does not make them as interest under the Income-tax Act.

> *A similar question arose before the Income-tax Appellate Tribunal in the case of Delhi Development Authority v. ITO 1995 53 ITD 19 (Delhi), and the Appellate Tribunal held that the amounts credited in the accounts of the allottees were not in the nature of interest within the meaning of section 2(28A) of the Income-tax Act and the Appellate Tribunal quashed the orders of those authorities and directed that what is recovered by the DDA be refunded. The Appellate Tribunal also hoped that the DDA will be equally quick in paying back the amounts it recovered from the allottees. It appears to us that the Revenue authorities did not challenge this order of the Appellate Tribunal by making reference to the High Court under Section 256 of the Income-Tax Act. The Appellate Tribunal held that the amounts paid/credited to the allottees by the DDA under SFS (Self-Finance Scheme) did not fall under any category in section 2(28A) of the Income-tax Act, but represented measure for quantifying compensation for delay in construction and handling over possession of dwelling unit which was in the nature of non-taxable capital income. In coming to this conclusion the Appellate Tribunal relied on various judgments including that of the Supreme Court in the case of Dr. Shamlal Narula v. CIT 1964 Indiaw SC 263.*
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> *In our view, therefore, considering the definition of "interest" as contained in Section 2(28A) of the Income-tax Act, the provisions of section 194A were not applicable and the GDA was clearly wrong in deducting the tax deducted at source from the interest payable to the complainant. Accordingly, the order of the State Commission is upheld and this revision petition is dismissed."*

21. The Apex Court in the decision in **Haryana Urban Development Authority vs. Dev Dutt Gandhi, (2005) 9 SCC 497,** while dealing with the land acquisition cases, held that compensation awarded in lieu of the acquired land or enhanced amount paid or interest thereon made cannot be termed as income and income tax cannot be deducted. It is apt to reproduce paragraphs 3, 8 and 9 hereunder:

> 3. Before this Court a large number of Appeals have been filed by the Haryana Urban Development Authority and/or the

Ghaziabad Development Authority challenging Orders of the National Consumer Disputes Redressal Commission, granting to Complainants, interest at the rate of 18% per annum irrespective of the fact of each case. This Court has, in the case of Ghaziabad Development Authority v. Balbir Singh reported in (2004) 5 SCC 65, deprecated this practice. This Court has held that interest at the rate of 18% cannot be granted in all cases irrespective of the facts of the case. This Court has held that the Consumer Forums could grant damages/compensation for mental agony/harassment where it finds misfeasance in public office. This Court has held that such compensation is a recompense for the loss or injury and it necessarily has to be based on a finding of loss or injury and must co-relate with the amount of loss or injury. This Court has held that the Forum or the Commission thus had to determine that there was deficiency in service and/or misfeasance in public office and that it has resulted in loss or injury. This Court has also laid down certain other guidelines which the Forum or the Commission has to follow in future cases.

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8. The National Commission disposed of the Revision filed by the Appellants with a one paragraph Order relying upon its own decision the case of Haryana Urban Development Authority v. Darsh Kumar.

9. We are informed that on 18th March, 1998 a sum of Rs. 2,26,470/- has been paid to the Respondent. As the Appellants were at fault in not developing the area for a number of years, the Commission was right in directing refund of amounts deposited. Normally, in case of refund of amount the Interest Act would have been applicable. However, as interest at the rate of 18% has already been paid on the principle laid down by this Court in the case of Ghaziabad Development Authority v. Balbir Singh (supra) no refund can be claimed. Counsel could not explain whether TDS had been deducted before making the payment of Rs. 2,26,470/-. As has been set out by the National Commission in its earlier Judgments and even by this Court, these are cases where amounts are being directed to be paid as compensation for mental harassment and agony and for failure of public duty. In such cases there is no question of deduction of TDS. If TDS has been deducted the Appellants shall, within two weeks from today, forward to the Respondent the amount of TDS deducted along with interest thereon at the rate of 12% from the date it was deducted till payment."

22. The Apex Court in another case titled **Commissioner of Income-Tax vs. Ghanshyam (HUF),** reported in **[2009] 315 ITR 1(SC) 1,**

laid down similar preposition. It is apt to reproduce paragraphs 24, 25 and 27 hereunder:

> "24. To sum up, interest is different from compensation. However, interest paid on the excess amount under Section 28 of the 1894 Act depends upon a claim by the person whose land is acquired whereas interest under Section 34 is for delay in making payment. This vital difference needs to be kept in mind in deciding this matter. Interest under Section 28 is part of the amount of compensation whereas interest under Section 34 is only for delay in making payment after the compensation amount is determined. Interest under Section 28 is a part of enhanced value of the land which is not the case in the matter of payment of interest under Section 34.
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> 25. It is clear from reading of Sections 23(1A), 23(2) as also Section 28 of the 1894 Act that additional benefits are available on the market value of the acquired lands under Section 23(1A) and 23(2) whereas Section 28 is available in respect of the entire compensation. It was held by the Constitution Bench of the Supreme Court in Sunder v. Union of India - (2001) 7 SCC 211, that "indeed the language of Section 28 does not even remotely refer to market value alone and in terms it talks of compensation or the sum equivalent thereto. Thus, interest awardable under Section 28, would include within its ambit both the market value and the statutory solatium. It would be thus evident that even the provisions of Section 28 authorise the grant of interest on solatium as well." Thus solatium means an integral part of compensation, interest would be payable on it. Section 34 postulates award of interest at 9% per annum from the date of taking possession only until it is paid or deposited. It is a mandatory provision. Basically Section 34 provides for payment of interest for delayed payment.
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> 27. In the case of Hindustan Housing (supra) certain lands belonging to the assessee-company, which was in the business of dealing in land and which maintained its account on mercantile system, were first requisitioned and then compulsorily acquired by the State Government. The Land Acquisition Officer awarded Rs.24,97,249/- as compensation. On appeal the Arbitrator made an award at Rs.30,10,873/- with interest at 5% from the date of acquisition. Thereupon, the State preferred an appeal to the High Court. Pending the appeal, the State Government deposited in the Court Rs.7,36,691/- being the additional amount payable under the award and the assessee was permitted to withdraw that additional amount on furnishing a security bond for refunding the amount in the event of the said Appeal being allowed. On receiving the amount, the assessee credited it in its suspense account on the same date. The question was : whether the additional amount

> of Rs.7,24,914/- could be taxed as the income on the ground that it became payable pursuant to the award of the Arbitrator. The Tribunal held that the amount did not accrue to the assessee as its income and was, therefore, not taxable in the assessment year 1956-57. The financial year in which the additional amount came to be withdrawn ended on 31.3.56. It was held by this Court that although award was made on 29.7.1955, enhancing the amount of compensation payable to the assessee, the entire amount was in dispute in the appeal filed by the State. Therefore, there was no absolute right to receive the amount at that stage. It was held that if the Appeal was to be allowed in its entirety, the right to payment of enhanced compensation would have fallen altogether. Therefore, according to this Court, the extra amount of compensation of Rs.7,24,914/- was not income arising or accruing to the assessee during the previous year relevant to the assessment year 1956-57."

23. Having said so, the Circular, dated 14.10.2011, issued by the Income Tax Authorities, whereby deduction of income tax has been ordered on the award amount and interest accrued on the deposits made under the orders of the Court in Motor Accident Claims cases, is quashed and in case any such deduction has been made by respondents, they are directed to refund the same, with interest at the rate of 12% from the date of deduction till payment, within six weeks from today.

(Mansoor Ahmad Mir)
Chief Justice

October 15, 2014 **(Tarlok Singh Chauhan)**
(tilak) **Judge**